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**Re: Loans in Areas Having Special Flood Hazards – Private Flood Insurance
Docket ID FRS-2016-0354-0001**

To Whom It May Concern:

The Council of Insurance Agents & Brokers (“The Council”) appreciates this opportunity to comment on federal regulators’ (collectively, the “agencies”) joint proposed rule regarding private flood insurance under the federal flood insurance statutes and the National Flood Insurance Program (“NFIP”).¹ The Council represents the largest and most successful property/casualty and employee benefits agencies and brokerage firms. Council member firms annually place more than \$200 billion in commercial insurance business in the United States and abroad. Our members operate both nationally and internationally, conducting business in some 30,000 locations and employing more than 120,000 people worldwide.

As a general matter, The Council supports expansion of the private flood insurance market. We therefore support all proposals—legislative and regulatory—that encourage and facilitate that objective (e.g., by simplifying and streamlining relevant processes and requirements). We appreciate the agencies’ attention to this issue and your work to implement the Biggert-Waters

¹ Joint notice of proposed rulemaking on Loans in Areas Having Special Flood Hazards—Private Flood Insurance published by the Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, Farm Credit Administration, and National Credit Union Administration. 81 Fed. Reg. 78063 (Nov. 7, 2016).

Act's (the "Act") private flood provisions and policy goal of increasing private policy placements.

To date, growth of the private market has been at least partially hindered by the complex statutory framework governing private flood under the NFIP. Specifically, the Act's technical and complicated definition (and attendant lender analysis) of qualifying "private flood insurance" has left some regulated lending institutions unable or unwilling to accept private policies, despite the Act's mandatory acceptance requirement. Thus, while we recognize that regulators are constrained by the text of the Biggert-Waters Act and other federal flood laws, we strongly encourage you to simplify and clarify—to the greatest extent possible—the rules and processes related to private flood insurance.

The Council supports the agencies' inclusion in their proposed rule of definitional clarifications, the mandatory acceptance compliance aid provision, and a new discretionary acceptance option—each of which is within the bounds of the agencies' authority under the Act. All of these provisions, we believe, will tend to encourage lender acceptance of private flood insurance policies. Below, we have included some specific suggestions on how these pro-private market portions of the agencies' proposal could be strengthened.

First, the agencies' proposed clarification regarding the "coverage at least as broad as" standard in the Act's "private flood insurance" definition is a positive development. This ambiguous standard has been problematic for lenders and has led some—for fear of misapplying the standard—to err on the side of not accepting private policies. In general, any additional guidance and/or clarification in this area will help alleviate the burden on lenders and encourage their acceptance of private flood. Additional clarity also would help minimize variation in the marketplace and disparate lender interpretations of what constitutes a qualifying policy (and improper, albeit unintentional, denials of satisfactory policies).

The agencies' proposed compliance aid provision for mandatory acceptance of private flood insurance also is a helpful step. The Council supports a mandatory acceptance regime, but we are mindful—based on our experience to date—that overly burdensome and complex compliance obligations can undermine the purpose and utility of such a regime. An effective compliance aid provision must therefore simplify the current system in meaningful ways.

While the proposed compliance aid places some onus on insurers to show how their policies comply with the law, we believe the provision could go further toward alleviating compliance burdens and concerns for lenders. Lending institutions, which do not have expertise (and in some cases, resources) to confidently analyze technical insurance documents, should not have a substantial verification/assessment obligation like the one contemplated in the proposed compliance aid. Although the proposed rule would help guide lenders to some extent by requiring insurer summaries of how their policies satisfy each legal criterion, the ultimate assessment of whether the policy satisfies the law still falls on the lender. In light of the

compliance documentation and assurance clause required from insurers under the proposed compliance aid, it is not clear what is to be gained by *also* requiring lender verification.²

To strengthen the compliance aid provision even further and help both insurers and lenders, the agencies could develop a template with standardized language for use by insurers in this context. Such a template would ensure that insurers, agents and brokers, lenders, and policyholders have a standardized explanation and verification of policies' satisfaction of each legal requirement.

As noted above, The Council also supports the agencies' inclusion of a discretionary acceptance option for private flood policies. Again, however, the compliance/analysis burden falls on the lending institutions, which may limit the effectiveness of this option as a means of expanding the private market. For instance, when a lender opts to accept coverage that is "similar to" coverage provided under a standard flood insurance policy ("SFIP"), the proposed rule would require the lender to compare the private policy with the SFIP and determine any differences and whether the private policy provides sufficient protection for the property secured by the loan. This structure is reminiscent of the current system under which lenders are reluctant to accept private policies.

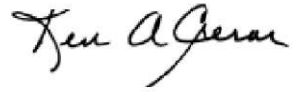
Similar to the structure of the mandatory acceptance compliance aid provision, insurers could play a role in facilitating the "similar to" analysis. For example, the discretionary acceptance option could require insurers to describe the differences between their policies and SFIPs, rather than placing that comparison obligation on the lenders. To the extent the policy assessment responsibility (and attendant liability) rests fully with the lenders, it is unlikely that those institutions will take advantage of the discretionary option.

Additionally, the discretionary acceptance option presents an opportunity to further expand private market coverage for residential risks; namely, by explicitly allowing lenders to accept private residential policies written by surplus lines insurers. Such policies are already being written in several states where unique residential risks cannot adequately be covered by a SFIP or admitted insurer policy. Thus, a rule from the agencies sanctioning discretionary acceptance of these policies would avoid unnecessary disruptions in the marketplace, provide important private-sector options and solutions for consumers.

In sum, The Council supports the agencies' efforts to expand the private flood insurance market by injecting additional clarity, compliance aids, and acceptance options into the private flood regime under Biggert-Waters. As outlined above, however, some elements of the agencies' proposal could be redesigned to better encourage and enable lending institutions to accept private policies. Again, we appreciate your consideration of these important issues.

² We understand that some insurers are already taking an additional step to help lenders evaluate and accept their private flood policies by including affirmative statements/certifications of compliance with the law in their policy documents.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ken A. Crerar". The signature is fluid and cursive, with the first name "Ken" being more prominent.

Ken A. Crerar

President

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